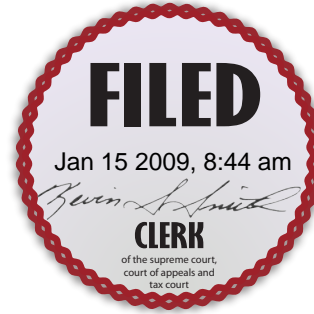


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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DANISSA MOSS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0807-CR-590

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Charles Wiles, Senior Judge  
Cause No. 49F09-0804-FD-82798

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**January 15, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBB, Judge**

### Case Summary and Issues

Following a bench trial, Danissa Moss appeals her convictions of theft, a Class D felony, and possession of paraphernalia, a Class A misdemeanor, as well as her habitual offender sentence enhancement. On appeal, Moss raises two issues, which we restate as 1) whether the trial court properly denied Moss's motion for a continuance; and 2) whether sufficient evidence supports the trial court's habitual offender finding. Concluding that the trial court properly denied Moss's motion for a continuance and that sufficient evidence supports the trial court's habitual offender finding, we affirm.

### Facts and Procedural History

On April 15, 2008, a customer and employee at a Washington Square Mall shoe store in Indianapolis observed Moss exit the store with shoes she had not purchased. Another shoe store employee confronted Moss, who claimed the shoes were a gift from her grandmother. The employee summoned a police officer, who escorted Moss back to the store and placed her under arrest after questioning the witnesses. While Moss was emptying her pockets, the officer observed a silver, residue-encrusted tube. Subsequent testing indicated the residue on the tube was cocaine.

Later that afternoon, the State charged Moss with theft, a Class D felony, and possession of paraphernalia, a Class A misdemeanor. On April 21, 2008, the State filed a notice of intent to seek sentence enhancement based on Moss's alleged status as an habitual offender. On May 19, 2008, the trial court presided over a bench trial, hearing testimony from the customer, the two shoe store employees, and the investigating officer, among others. Based on this evidence, the trial court found Moss guilty of both charges

and, following the sentencing enhancement stage of the trial, also found Moss to be an habitual offender. Moss now appeals.

### Discussion and Decision

#### I. Denial of Motion for Continuance

Moss argues the trial court improperly denied her motion for a continuance. Moss did not seek a continuance for one of the reasons stated in Indiana Code section 35-36-7-1, which means her motion was “non-statutory.” See Maxey v. State, 730 N.E.2d 158, 160 (Ind. 2000). We will reverse the trial court’s ruling on such a motion only if there has been an abuse of discretion and resultant prejudice. Id. Abuse of discretion occurs if the trial court’s decision is clearly against the logic and effect of the facts and circumstances before it. Schmid v. State, 804 N.E.2d 174, 177 (Ind. Ct. App. 2004), trans. denied.

At a hearing two weeks before trial, Judge Heather Welch asked Moss if Moss wanted her to preside over Moss’s bench trial. Moss stated she did, and Judge Welch scheduled Moss’s bench trial accordingly. At the bench trial, however, Senior Judge Charles Wiles was presiding (apparently due to a scheduling error or unexpected event, but the record is unclear on this point), and denied Moss’s motion for a continuance based in part on argument from the State that granting the motion would be improper because it had five witnesses “read[y] to go.” Tr. at 14.

Moss argues the trial court abused its discretion when it denied her motion for a continuance because she “truly wanted [Judge Welch] to preside over her Court trial” and that she suffered prejudice because “her sense of comfort with the proceedings and her

belief that her right to assert her innocence” were undermined by Senior Judge Wiles presiding instead.<sup>1</sup> Appellant’s Brief at 9. We acknowledge Moss must have certainly been disappointed to learn that Senior Judge Wiles was presiding over her bench trial when, just two weeks earlier, she expressed a desire to have Judge Welch hear her case, and Judge Welch indicated she would do so. Unfortunately for Moss, we are not aware of any authority indicating that a defendant’s preference for a particular judge is relevant in determining whether a trial court should grant a continuance motion. Inconvenience to witnesses, however, is a valid consideration, see Williams v. State, 271 Ind. 476, 480, 393 N.E.2d 183, 186 (1979), which is presumably the point the State was trying to make when it argued its witnesses were “read[y] to go.” Tr. at 14. As such, we cannot say the trial court abused its discretion when it denied Moss’s motion for a continuance. Because Moss cannot demonstrate the trial court abused its discretion, it follows that she is not entitled to reversal of the trial court’s decision.

## II. Habitual Offender Finding

Moss next argues insufficient evidence supports the trial court’s habitual offender finding. This court reviews a challenge to the sufficiency of the evidence supporting an habitual offender finding under the same standard as the sufficiency of the evidence supporting a conviction. See McManomy v. State, 751 N.E.2d 291, 292 (Ind. Ct. App. 2001). That is, we will affirm if the finding is supported by substantial evidence of probative value. Id. In conducting this review, we do not reweigh evidence, but look only to evidence favorable to the finding, along with any reasonable inferences drawn therefrom. Id.

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<sup>1</sup> Moss does not allege that Senior Judge Wiles was unfairly prejudiced against her.

To establish Moss was an habitual offender, the State had to prove beyond a reasonable doubt that Moss had accumulated two prior unrelated felony convictions. See Ind. Code § 35-50-2-8. Prior felonies are unrelated if the commission of the second felony is subsequent to sentencing for the first felony and sentencing for the second felony precedes the commission of the felony for which the enhanced sentence is sought. Ind. Code § 35-50-2-8(c); Toney v. State, 715 N.E.2d 367, 369 (Ind. 1999). To prove this sequence, the State introduced certified copies of judgments of conviction and arrest reports indicating that Moss committed Class D felony theft on September 19, 1996, with sentencing on January 13, 1997, and that Moss again committed Class D felony theft on October 21, 1999, with sentencing on November 18, 1999.

Moss concedes the judgments of conviction sufficiently establish the foregoing sentencing dates, but argues the arrest reports are insufficient to establish that she committed the felonies on September 19, 1996, and October 21, 1999, respectively. Moss's argument overlooks that each arrest report lists the "Offense Date" for the arrest. See State's Exhibit 3 (listing an "Offense Date" of September 19, 1996); State's Exhibit 4 (listing an "Offense Date" of October 21, 1999). As such, the trial court could have reasonably inferred that the State alleged, and ultimately proved (as evidenced by the judgments of conviction), Moss committed the offenses on those dates.

Having rejected Moss's argument that the arrest reports are insufficient to establish the dates upon which she committed the prior unrelated felonies, we are left with evidence that Moss committed Class D felony theft on September 19, 1996, and was sentenced for that offense on January 13, 1997, and that Moss again committed Class D

felony theft on October 21, 1999, and was sentenced for that offense on November 18, 1999. Coupling this evidence with evidence that Moss committed the instant offense on April 15, 2008, it becomes clear the State presented sufficient evidence that Moss accumulated two prior unrelated felony convictions within the meaning of Indiana Code section 35-50-2-8(c). Thus, it follows that sufficient evidence supports the trial court's habitual offender finding.

### Conclusion

The trial court did not abuse its discretion when it denied Moss's motion for a continuance, and sufficient evidence supports the trial court's habitual offender finding.

Affirmed.

CRONE, J., and BROWN, J., concur.